

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Pension Benefit Guaranty Corporation,  <div style="text-align: center;">Appellant,</div> <div style="text-align: center;">v.</div> Oneida Ltd.,  <div style="text-align: center;">Appellee.             </div>	X * * * * * * * * X	Civil No. 1:08-cv-04038-RMB
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**JOINT MOTION TO STAY PROCEEDINGS PENDING AUTHORIZATION  
TO PROCEED WITH DIRECT APPEAL TO COURT OF APPEALS**

Pursuant to 28 U.S.C. § 158(d)(2)(D), Oneida Ltd. (“Oneida”) and the Pension Benefit Guaranty Corporation (“PBGC”) (collectively, the “Parties”) jointly move the Court to stay all proceedings, including briefing, on PBGC’s Notice of Appeal,<sup>1</sup> pending the Court of Appeals’ determination whether to authorize a direct appeal under 28 U.S.C. § 158(d)(2)(A).

To advance judicial efficiency and avoid unnecessary proceedings pending the Court of Appeals’ determination, the Parties move this Court to stay all proceedings, including any filing of briefs that would otherwise be due.

**I. FACTS**

On March 21, 2008, the Bankruptcy Court entered an Amended Order<sup>2</sup> granting summary judgment to Oneida, holding that its ERISA pension plan termination premiums under 29 U.S.C. § 1306(a)(7) were discharged, pre-petition bankruptcy claims. On March 28, 2008, PBGC filed a

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<sup>1</sup> Document #1 in this proceeding.

<sup>2</sup> Document #44 in the adversary proceeding, Case No. 06-01920, Bankr. S.D.N.Y.

Notice of Appeal<sup>3</sup> with respect to that Amended Order. The Parties are jointly pursuing a direct appeal to the U.S. Court of Appeals for the Second Circuit.

## II. DISCUSSION

The Parties jointly urge the Court to stay all proceedings on PBGC's Notice of Appeal pending a determination by the Court of Appeals whether to authorize a direct appeal under 28 U.S.C. § 158(d)(2)(A). This will promote judicial economy by maintaining the status quo pending a determination of the appropriate forum for the appeal, without affecting the confirmed plan of reorganization, the reorganized company, or any other entity.

This Court has the authority to grant a stay pending the Court of Appeals' determination.<sup>4</sup> 28 U.S.C. § 158(d)(2)(D) provides that a direct appeal "does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal is pending, issues a stay of such proceeding pending the appeal."

In the current circumstances, a stay will protect the rights of all parties in interest by eliminating the burden of litigating the appeal in the district court pending the Court of Appeals' determination. No entity will be harmed by a stay.

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<sup>3</sup> Document #45 in the adversary proceeding, Case No. 06-01920, Bankr. S.D.N.Y.; document #1 in this proceeding.

<sup>4</sup> See Fed. R. Civ. Proc. 62.

### **III. MEMORANDUM OF LAW**

Because the legal points and authorities upon which this motion rely are incorporated herein, the Parties respectfully request that the requirement of filing and serving a separate memorandum of law pursuant to Local Rule 7.1(a) be deemed satisfied.

### **IV. NO PRIOR REQUEST**

Neither of the Parties has made any prior motion for the relief sought herein to this or any other court.

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## V. CONCLUSION

The Parties respectfully request that the Court stay all proceedings, including any briefs that would otherwise be required, pending the Court of Appeals' determination whether to authorize a direct appeal.

Date: May 12, 2008  
Washington, D.C.

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**CERTIFICATION TO COURT OF APPEALS  
BY ALL PARTIES**

A notice of appeal having been filed in the above-styled matter on March 28, 2008, Oneida Ltd. and the Pension Benefit Guaranty Corporation, who are all the appellants and all the appellees, hereby certify to the court under 28 U.S.C. § 158(d)(2)(A) that a circumstance specified in 28 U.S.C. § 158(d)(2) exists as stated below.

Leave to appeal in this matter is not required under 28 U.S.C. § 158(a).

This certification arises in an appeal from a final judgment, order, or decree of the United States Bankruptcy Court for the Southern District of New York entered on March 21, 2008.

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The judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for this circuit or of the Supreme Court of the United States, or involves a matter of public importance.

Date: May 12, 2008  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Joint Motion to Stay Proceedings Pending  
Authorization to Proceed with Direct Appeal to Court of Appeals and Certification to Court of  
Appeals by All Parties was served by overnight courier and the courts electronic CM/ECF  
System this 12th day of May, 2008, on the following:

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